

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING RESOLUTION NO. 69200, AS AMENDED, TO PROVIDE FOR THE ISSUANCE OF NOTES TO FINANCE AND REFINANCE PROJECT COSTS AND CAPITALIZED INTEREST ASSOCIATED WITH IMPLEMENTING THE AIRPORT MASTER PLAN AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT AND TO REFUND OR TO PAY DEBT SERVICE ON OTHER OBLIGATIONS OF THE CITY ISSUED TO PAY SUCH COSTS; AND DELEGATING TO THE DIRECTOR OF FINANCE AND TO OTHER OFFICERS OF THE CITY AUTHORIZATION TO ESTABLISH TERMS AND CONDITIONS FOR THE ISSUANCE AND PAYMENT OF SAID COMMERCIAL PAPER NOTES, AND TO TAKE OTHER NECESSARY ACTIONS AND TO PREPARE, EXECUTE AND DELIVER OTHER NECESSARY DOCUMENTS IN CONNECTION THEREWITH**

**WHEREAS**, the City of San José (the "City") is authorized by its charter to issue notes from time to time for the purpose of financing and refinancing capital project costs in connection with the Norman Y. Mineta San José International Airport (the "Airport") and to refund such notes; and

**WHEREAS**, on October 2, 1984, the City Council of the City (the "City Council") adopted Resolution No. 57794 providing for the issuance of obligations secured by and payable from the revenues of the Airport Enterprise, as defined in said resolution (said resolution, as supplemented and amended from time to time, the "Master Bond Resolution"); and

**WHEREAS**, the City Council adopted Resolution No. 69199 (the "Tenth Supplemental Resolution"), amending and supplementing the Master Bond Resolution to provide for the issuance of obligations secured by and payable from the revenues of the Airport Enterprise on a basis and secured by a lien that is subordinate to the lien of the Airport revenue bonds issued and outstanding under the Master Bond Resolution; and

**WHEREAS**, the City Council adopted Resolution No. 69200 authorizing the issuance of not to exceed \$100,000,000 of the City's San José International Airport Subordinated Commercial Paper Notes (the "Notes") and has heretofore authorized the issuance of Series A Notes (Non-AMT), Series B Notes (AMT) and Series C Notes (Taxable); and

**WHEREAS**, the City Council adopted Resolution No. 70532 amending and restating the Master Bond Resolution in the form of a Master Trust Agreement dated as of July 1, 2001, between the City and The Bank of New York Mellon Trust Company, N.A. (successor to BNY Western Trust Company), as trustee (the "Trustee"),

and the City and the Trustee have subsequently entered into amendments and supplements to the Master Trust Agreement (collectively, the "Master Trust Agreement"); and

**WHEREAS**, the City Council adopted Resolution No. 73252 amending Resolution No. 69200 to increase the maximum authorized principal amount of Notes that may be issued and outstanding pursuant to said Resolution from \$100,000,000 to \$200,000,000; and

**WHEREAS**, the City Council adopted Resolution No. 73589 amending Resolution No. 69200 to increase the maximum authorized principal amount of Notes that may be issued and outstanding pursuant to said Resolution from \$200,000,000 to \$450,000,000; and

**WHEREAS**, the City Council adopted Resolution No. 74116 amending Resolution No. 69200 to delegate authority to the Director of Finance or the Director of Finance's authorized designee with respect to the Second Amended and Restated Letter of Credit and Reimbursement Agreement between the City and JPMorgan Chase Bank, National Association, individually and as agent and Bank of America, N.A., and Dexia Credit Local, acting through its New York Branch; and

**WHEREAS**, the City Council adopted Resolution No. 74300, amending Resolution No. 69200 to increase the maximum authorized principal amount of Notes that may be issued and outstanding at any one time from \$450,000,000 to \$600,000,000, and providing for the issuance of Series D Notes (Non-AMT), Series E Notes (AMT) and Series F Notes (Taxable) in addition to the Series A, Series B and Series C Notes; and

**WHEREAS**, the City has determined that providing for the redesignation of the Series A Notes as the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series A-1 (Non-AMT)" and the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series A-2 (Non-AMT/Private Activity)" (the "Series A-2 Notes" and together with the Series A-1 Notes, the "Series A Notes") and the Series D Notes as the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series D-1 (Non-AMT)" and the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series D-2 (Non-AMT/Private Activity)" (the "Series D-2 Notes" and together with the Series D-1 Notes, the "Series D Notes") in order to take advantage of provisions of The American Reinvestment and Recovery Act of 2009 allowing "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code (the "Code") to be issued as obligations the interest on which is not subject to the alternative minimum tax under the Code, will be in the best interests of the City and of the Airport; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

Section 1. All of the above recitals are true and correct and this Council hereby so finds and determines.

Section 2. The issuance from time to time of the Series A Notes, the Series B Notes and the Series C Notes, the Series D Notes, the Series E Notes and the Series F Notes is hereby ratified, including the issuance from time to time of the Series A-1 Notes, the Series A-2 Notes, the Series D-1 Notes and the Series D-2 Notes is hereby authorized and approved. Notes may be issued from time to time to finance or refinance costs of the Facilities (including capitalized interest), and to refund or pay debt service on other obligations of the City issued to finance or refinance costs of the Facilities as specified in Resolution No. 69200, as previously amended and as may be amended in the future.

Section 3. All actions heretofore taken by the officers and agents of the City with respect to the sale, issuance and delivery of the Notes and the other transactions authorized and contemplated herein are hereby approved, confirmed and ratified, and the officers and employees of the City are hereby authorized and directed to do any and all things they may deem necessary to advisable to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution. The Director of Finance of the City and the other officers and employees of the City are hereby authorized and directed to execute and deliver any and all certificates and representations, including signature certificates, no-litigation certificates, arbitrage bond certificates and tax certificates necessary and desirable to accomplish the transactions set forth above.

Section 4. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any remaining provisions hereof.

Section 5. Resolution No. 69200, as amended by Resolution No. 73252, Resolution No. 73589, Resolution No. 74116 and Resolution No. 74300, is hereby ratified and confirmed in all respects and shall continue in full force and effect in accordance with the terms and provisions thereof, as heretofore amended and supplemented, and as supplemented by this Resolution. This Resolution shall take effect from and after its adoption.

ADOPTED this 1st day of September, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

## CITY CLERK'S CERTIFICATE

I, Lee Price, City Clerk of the City of San José, hereby certify as follows:

The foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly, regularly and legally held at the San José City Hall, 200 E. Santa Clara Street, San José, California, on September 1, 2009 and entered into the minutes thereof, of which meeting all of said members of the Council had due notice and at which a quorum thereof were present.

At said meeting said resolution was adopted by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

An agenda of said meeting was posted at least 72 hours before said meeting at 200 E. Santa Clara Street, San José, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original synopsis of said meeting on file and of record in my office. Said original resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: \_\_\_\_\_, 2009.

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City Clerk of the City of San José, California